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Situation of human rights in Bosnia and Herzegovina and the Federal Republic of Yugoslavia

Note by the Secretary-General*

The Secretary-General has the honour to transmit to the members of the General Assembly the periodic report submitted by José Cutileiro, the Special Representative of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina and the Federal Republic of Yugoslavia, in accordance with the Commission on Human Rights resolution 2001/12 of 18 April 2001.

* Pursuant to resolution 54/248, the present report is being submitted on 11 October 2001 in order that it may contain as much updated information as possible.

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Executive summary

The Special Representative of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina and the Federal Republic of Yugoslavia travelled on mission to Bosnia and Herzegovina from 24 to 27 July 2001 and to the Federal Republic of Yugoslavia from 27 August to 4 September 2001. During these missions he met with members of the Presidency of Bosnia and Herzegovina, the President of Yugoslavia, and senior members of the Governments of both countries, as well as with leaders of international organizations and representatives of civil society.

Following the completion of his mission to Bosnia and Herzegovina, the Special Representative would stress that those indicted by the International Tribunal for the Former Yugoslavia must be arrested to stand trial. Furthermore, the national authorities must undertake the prosecution, dismissal or transfer of persons in military, police forces or other public functions responsible for serious violations of the human rights of ethnic or minority groups. He noted with appreciation that a Truth and Reconciliation Commission is being mooted.

Within Bosnia and Herzegovina, two questions, that of the return of refugees and displaced persons and that of the return of property, remain prominent. The implementation of property laws in Bosnia and Herzegovina is moving far too slowly. Bosnia and Herzegovina and its Entities must ensure consistency and non-discrimination in the implementation of the property laws, while at the same time ensuring that the physical security, economic rights and social protections of the people are assured on a non-discriminatory basis. The protection of human rights is essential in order to create sustainable development in Bosnia and Herzegovina, a post-conflict society, as a mechanism to correct the biased practices of the war.

The lack of a multiethnic, professional police force and a functioning and genuinely independent judiciary persists and has resulted in numerous instances of impunity and a disregard for the rule of law. The extent to which organized crime and corruption feature in society in general remains a disturbing obstacle to the creation of a country where human rights are respected and violations redressed. Trafficking in people remains a serious human rights violation. The Government's national plan of action on trafficking is a welcome development, but not sufficient in and of itself.

In the Federal Republic of Yugoslavia, the Special Representative recognized that any assessment of the current human rights situation must take into account the degraded economic and social situation that was inherited by the democratically elected administration in October 2000. Progress has been made in redressing a number of human rights violations committed by the former Government, including the release of many Albanian political prisoners, and in investigating the fate of persons missing during the Kosovo conflict in 1999. He also noted that progress has been made to reform the institutions of government at both Federal and Republic levels. The Special Representative noted, however, that the overall pace and quality of institutional reform, particularly in the police, judiciary and the media, remains slow and somewhat ad hoc at all levels. The overall process of reform has been severely impeded by the unresolved status of the Republic of Montenegro within the Federal structure and the lack of real cooperation and dialogue between the constituent authorities at all levels.

In southern Serbia, the peaceful conclusion of the conflict in May 2001 was a welcome development and a triumph for political dialogue over armed conflict. The Special Representative noted the progress made in implementing the terms of the political settlement (the "Covic Plan") to improve the social, economic and political rights situation for ethnic Albanians in southern Serbia. He noted that, if confidence is to be fully established among all affected ethnic populations in the area, then the collective efforts of all parties, including the international community, will be required to implement the terms of the settlement fully and promptly.

In Kosovo, the Special Representative recognized not only the progress made but also the obstacles faced by the United Nations civil administration (the United Nations Interim Administration in Kosovo (UNMIK)) and the military component (Kosovo Force (KFOR)). In particular, he identified three areas of ongoing concern: the human rights situation and physical protection of ethnic minority communities in Kosovo; the quality of the rule of law, including the independence of the judiciary; and the extent to which human rights standards are reflected and integrated into the policies and practices of UNMIK and KFOR.

Report of the Special Representative of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina and the Federal Republic of Yugoslavia

I. Introduction

1. This is the first report submitted by José Cutileiro, the Special Representative of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina and the Federal Republic of Yugoslavia, who was appointed in June 2001, following the adoption of Commission resolution 2001/12 on 18 April 2001. The report considers human rights developments in the countries of the Special Representative's mandate through August 2001.

2. The Special Representative would like to extend his appreciation to the Office of the United Nations High Commissioner for Human Rights, and the field operations of the Office of the High Commissioner in the countries of his mandate for the support provided to him.

II. Bosnia and Herzegovina

3. The Special Representative was on mission in Bosnia and Herzegovina from 24 to 27 July 2001. During his visit in Sarajevo, he met with members of the Presidency and State Ministers. He did not visit Republika Srpska. He also met with the High Representative and other representatives from international organizations and civil society.

A. General observations

4. The General Framework Agreement for Peace in Bosnia and Herzegovina (A/50/790-S/1995/999), signed at the end of 1995, brought a cessation to the egregious violations of human rights and humanitarian law in Bosnia and Herzegovina, although the parties have never fully complied with the Agreement. Clearly it would be disingenuous to assess progress on human rights by using the situation in November 1995 as a benchmark, as any comparison between a state of war and a state of peace is misleading. The international standards set by the United Nations must be used to measure the country's compliance with international human rights standards, that is, an analysis of Bosnia and Herzegovina must be grounded in an assessment of the fulfilment of the State's obligation to ensure the enjoyment of human rights by its citizens. The nature of human rights violations has evolved alongside the evolution of the economic and political situation. Compounding the problems associated with the conflict, the economy switched from state control to a free market economy with limited transitionary safeguards. Nationalism continues to undermine the political and legal system. The weak coalition government formed after the last elections has increasingly recognized the need to comply with its international human rights obligations, however, implementation has been paralysed by, inter alia, nationalist elements still in office.

5. The adoption by the Constitutional Court of Bosnia and Herzegovina of the Decision on Constituent Peoples, issued in September 2000, ensuring that Bosniak, Croats, and Serbs are constituent peoples of the State and not solely of one Entity or the other is a positive step. Under the terms of that Decision, there is no Entity to which certain groups belong, or Entity to which they do not belong.

B. War crimes and reconciliation

6. Six years after the signing of the General Framework Agreement, Bosnia and Herzegovina has still to address its core problem; some persons in positions of power were associated with ethnic cleansing, elements of which have been adjudicated as constituting war crimes and crimes against humanity. Although many of those indicted by the International Tribunal for the Former Yugoslavia have been taken into custody, the remaining indictees, including the most culpable, must be arrested and transferred to The Hague to stand trial. The Special Representative reminds the State and Entities of their obligation under the General Framework Agreement[1] to fully comply with the Tribunal and its orders issued pursuant to article 29 of the statute of the Tribunal, and notes that the Security Council reiterated this obligation in its resolution 1357 (2001).

7. Beyond complying with the Tribunal, the Framework Agreement places responsibility on the domestic authorities to undertake crucial measures, including "the prosecution, dismissal or transfer, as appropriate, of persons in military, paramilitary and police forces and other public servants, responsible for serious violations of the basic rights of persons belonging to ethnic or minority groups".[2] It is essential to the future of Bosnia and Herzegovina that an adequate legal framework to effect such duties be established. This is necessary to reinstil public confidence in the authorities, allay community fears of ethnic bias and improve the climate of security by ensuring that those who are culpable are no longer exerting political, economic or social control. The framework put into place must be implemented in full adherence to the provisions laid out in the General Framework Agreement.

8. Reconciliation is another necessary step in the transformation of Bosnia and Herzegovina into a modern state based on citizens not nations. To that end, a Truth and Reconciliation Commission is being mooted. As a complementary body to the International Tribunal and the courts, the Commission would not establish criminal liability, but would draw conclusions on the nature of the circumstances that produced ethnic mistrust and misunderstandings of such magnitude as to result in the type of human rights violations witnessed during the conflict.

C. Rule of law

9. As stated above, in the absence of a multiethnic, professional police force and a functioning and genuinely independent judiciary, there have been numerous incidents of impunity and a disregard for the rule of law has taken root. Within the police and judiciary, as well as within the civil service, there is still a lack of professionalism, largely owing to ethnic and political bias and corruption. Six years into its mission, the United Nations Mission in Bosnia and Herzegovina (UNMIBH) has yet to complete the reform of either the structure or the composition of the local police in Bosnia and Herzegovina. This must be done. Minority representation in the police forces is still well below the target agreed to in the Bonn-Petersberg Agreement and in the Framework Agreement on the Democratization and Restructuring of the Police in the Republika Srpska. In a similar but distinct manner, the Independent Judicial Commission should make full use of its mandate to ensure that judicial and prosecutorial commissions comply with their legal obligations. Without an effective, efficient and non-discriminatory police and judiciary, there can be no rule of law and therefore no secure rights for anyone.

10. The issue of endemic corruption within governmental structures is of grave concern and militates against progress. Organized crime must be disrupted and the perpetrators prosecuted. Rather than being reduced or curtailed, many cross-border illegal activities, which began during the conflict, and some since then, have expanded. The institutionalization of corruption has further undermined public confidence in the authorities. Overall, the extent to which organized crime and corruption feature in the economy and in society in general remains a disturbing obstacle to the creation of a country where human rights are respected and violations redressed by the agents of the State and Entities. Quick and decisive action is required of the State and international community to rid the country of this cancer.

D. Property

11. The return of refugees and displaced persons remains at the forefront of unresolved questions. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), over 700,000 people from Bosnia and Herzegovina are still displaced persons, without durable solutions, or refugees. Implementation of property laws improves far too slowly and requires constant monitoring and pressure from the international community. This is especially true in the Republika Srpska, which was publicly reprimanded by the Organization for Security and Cooperation in Europe (OSCE) Mission to Bosnia and Herzegovina in September 2001 for non-implementation of property laws, as only 21 per cent of those filing claims have been able to repossess their properties in that Entity. At the same time, Bosnia and Herzegovina is witnessing an increase in the number of returnees, in part due to the uneven implementation of the Property Legislation Implementation Plan and the involved evictions, which may leave persons with no options but to return, potentially to unreconstructed or occupied houses.

12. The State and Entities must ensure consistency and non-discrimination in the implementation of the property laws, while at the same time ensuring that the physical security, economic rights and social protections of the people are assured on a non-discriminatory basis. This is all the more important given that, according to UNHCR, returns increased two-fold in the first half of 2001 over the previous year. Third countries should remain wary of returning certain categories of refugees to Bosnia and Herzegovina, especially when those refugees are determined to be in continued need of international protection by UNHCR or are from such areas where ethnically motivated violations of economic and social rights persists and where there is no true climate of security.

13. Compounding the problems, there are still, according to UNHCR, 24,500 Croatian Serbs in Bosnia and Herzegovina, primarily in Banja Luka area. This deeply affects the return from other parts of the country, as these persons are in many cases occupying housing belonging to citizens of Bosnia and Herzegovina. Among this group are many long-term residents of Croatia who did not possess republican citizenship under the Socialist Federal Republic of Yugoslavia. They should be granted citizenship in recognition of their ongoing connection to the Republic of Croatia and the fact that the dissolution of a country, the Socialist Federal Republic of Yugoslavia, was integral to the creation of the current situation. The current regime for obtaining Croatian citizenship, and thus the ability to return and exercise full rights, is discriminatory in nature as different standards are applied to ethnic Croats. As a member of the Commission on Human Rights, the Republic of Croatia should support efforts to find a solution to this problem.

E. Social and economic rights

14. Most of the human rights violations seen in Bosnia and Herzegovina are predicated on some form of discrimination. While the poor economic situation affects the country as a whole, it more acutely impacts on vulnerable groups, such as minority returnees, female-headed households and the Roma. Allegations of differential access to employment, social welfare, health, public utilities and education continue to be reported. The intersection of gender and ethnic discrimination exacerbates the lack of protection this group is afforded. Many areas of return cannot be said to meet the minimum criteria for compliance with international standards and, as a result, an overall climate of security does not exist, rendering sustainability infeasible.

15. Unemployment runs unacceptably high, with a mere 635,000 persons out of a population of over 3 million in Bosnia and Herzegovina listed as employed. Official estimates for unemployment run at 40 per cent for the State, and higher in the Republika Srpska. According to Early Warning System of the United Nations Development Programme (UNDP), 42.4 per cent of households in the Federation and 60.7 per cent of those in the Republika Srpska cannot afford basic necessities from the consumer basket. The national social protection system has been decimated. The lack of economic regeneration and decreasing international aid have highlighted the problems vulnerable groups encounter in accessing rights and the dearth of services has forced returnees, in particular, into hardships that militate against return.

16. Bosnia and Herzegovina was abruptly propelled into market reform as it emerged from conflict. The protection of economic and social rights is often seen as impracticable and considered incompatible with market reform. This is incorrect. It is important to insist upon the compatibility of reforms and the protection of economic and social rights. Even where available and resources are insufficient, the State is obligated to ensure the widest possible enjoyment of the rights under prevailing circumstances.

17. According to the World Bank, it is precisely the poorest segment of society in Bosnia and Herzegovina that pays the highest out-of-pocket costs for medical care.[3] The elaborate division of authority between Entities and between the Federation and its 10 cantons plagues health care and protection. The Entity laws on health care do not accord with international standards as they do not prescribe non-discriminatory access and the inability to receive health care outside of the place of insurance contribution has meant that the most vulnerable are disproportionately affected. Harmonization of access to health care must be prioritized.

F. Irregular migration: trafficking

18. Irregular migration into Bosnia and Herzegovina is an ever-increasing problem. An inadequate legislative framework coupled with an absence of procedural regulations has created a situation where persons of particular concern, namely asylum seekers, trafficked persons, smuggled migrants and those at risk of torture or inhumane or other degrading treatment, cannot be appropriately identified and guaranteed protection. As the State has yet to promulgate implementing legislation for the 1999 Law on Immigration and Asylum, and as superseded regulations continue to be applied, the conditions for entry and expulsion are unpredictable. This situation is exacerbated since, to date, the State Border Service does not control all border entry points, leaving some crossings under the control of the Entity or cantonal police.

19. The issue of trafficking in persons, in particular women and children, has had three major consequences; the first is the violation of human rights inherent in the process, the second is the economic impact; and the third, the power and influence that it has given to organized crime.

20. At present Bosnia and Herzegovina is predominantly a country of destination in terms of the trafficking of people, although there is increasing evidence that it is becoming a country of origin. The majority of those trafficked are from the Republic of Moldova, Romania and Ukraine. They are primarily women and children who fall into vulnerable groups for a variety of reasons, largely predicated on gender discrimination in the countries of origin, particularly regarding access to and participation in the economy and family-based violence.

21. There is clear evidence that a substantial part of the market for trafficked persons has been created by the large international civil and military presence in Bosnia and Herzegovina and by the fact that insufficient attention has been paid to ensuring that there are codes of conduct that are rigidly and transparently implemented. Those engaged in abusing trafficked persons must be brought to account, regardless of their nationality or status.

22. The Government is to be encouraged in its efforts to adopt its national plan of action to combat trafficking and to take seriously its obligations to provide the requisite human rights protections for the victims and a legal framework for the prosecution of the traffickers. To date, only local non-governmental organizations (NGOs) and the UNMIBH Human Rights Office, together with the International Organization for Migration (IOM) have taken action to protect trafficked persons. This is clearly not sustainable, and the State must ensure the implementation of the national plan of action if it is to prevent the deterioration of an already intractable and dangerous situation.

23. Bosnia and Herzegovina must be made accountable for the fulfilment of its obligations under international conventions to protect and ensure the access of rights for all persons, without discrimination. An integrated and multisectoral approach needs to be developed, engaging the expertise of all of the international agencies that are involved in close partnership with the State. The international community should not be afraid to hold the State responsible when it fails to protect human rights.

III. Federal Republic of Yugoslavia

24. The Special Representative undertook a visit to the Federal Republic of Yugoslavia from 27 August to 4 September 2001.

25. In Belgrade, the Special Representative met with senior members of the Federal Government, including President Vojislav Kostunica, and with the Ministers for Foreign Affairs, Justice, National and Ethnic Communities, as well as with Serbian Deputy Prime Minister, Nebojsa Covic, and other senior government officials in the Republic of Serbia. In Podgorica, he met with officials of the Republic of Montenegro, including the Ministers for Foreign Affairs, Interior, Justice and National and Ethnic Groups. In Kosovo, he met with the Special Representative of the Secretary-General, Hans Haekkerup, the Commander of KFOR, senior officials of UNMIK and local political leaders. Throughout the region, he met community leaders and representatives from civil society who are dealing with human rights issues and with members of the international community, including staff from OSCE and the United Nations.

26. The Special Representative wishes to acknowledge that, throughout his visit, he received the cooperation of all authorities and that he enjoyed frank and open dialogue, not only on progress made, but also

on obstacles to the enjoyment of human rights within the Federal Republic of Yugoslavia.

A. General observations

27. Any assessment of the current human rights situation in the Republic of Yugoslavia must take into account the very serious economic and social situation in which people of the country still find themselves after many years of government neglect, abuse of power and international isolation, including the effect of sanctions.

28. Against this backdrop, the Special Representative recognizes that there have been considerable improvements in the situation of human rights since the dramatic events of October 2000. Senior government officials within the Federal Government and the Republics of Montenegro and Serbia reiterated to him their commitment to undertake the necessary reform of national institutions to ensure better protection of human rights, notably in the areas of justice, law enforcement and the media. He also recognizes that progress has been made in addressing a number of historical human rights violations committed by the former government prior to October 2000, including the release of many political prisoners, investigations into the fate of persons of different ethnic groups missing during the armed conflict in Kosovo in 1999 and criminal investigations into murdered or other disappeared persons.

29. The Special Representative is concerned, however, that the pace of institutional reform remains slow and ad hoc. This essential process is severely impeded by the unresolved status of the Republic of Montenegro within the federal structure and the lack of practical cooperation and coordination between the different constituent authorities at all levels, including Federal and Montenegrin authorities and between Federal/Serbian authorities and UNMIK on a broad range of matters relating to Kosovo.

30. This is proving a serious distraction to those Ministries and government officials charged with the responsibility of re-establishing the rule of law, reforming the police and judiciary and combating organized crime, including trafficking in human beings. The Special Representative is also concerned that, although significant donor funds and international investment have begun to flow into the Federal Republic of Yugoslavia, particular priority and financial support must be given to ensure the successful reform of those institutions that protect human rights, the rule of law and the rights of ethnic minorities. He believes that a critical objective of the entire process of institutional reform must be an effective separation of legislative, executive and judicial powers with human rights and the rule of law as its foundation.

B. Situation in Serbia (excluding Kosovo)

1. Programme of legislative reform

31. The Special Representative welcomes the ambitious programmes of legislative reform being carried out by the Government notably in the areas of penal reform, including the Federal Penal Code and Code of Criminal Procedure, and, inter alia, laws to decentralize and promote a multi-ethnic police force, laws on anti-discrimination, local self-government, the judiciary, ethnic minorities, the creation of national human rights institutions and independence of the media. All of these will have an impact on the overall quality of human rights protection in the Federal Republic of Yugoslavia. He is concerned, however, that the present process of legislative reform is being developed ad hoc, rather than within a coordinated framework. As all draft laws must be fully compatible with the Federal Republic's obligations under international human rights law, the Special Representative encourages better and more centralized coordination between authorities at the Federal and Republic levels and a broader and more transparent basis of consultation with civil society.

2. Judicial reform

32. The Special Representative welcomes the steps taken to reform the judiciary, but notes that the present salary of judges, on average less than 400 new dinars per month, is not commensurate with their responsibilities and leaves the judicial process susceptible to corruption and abuse. The Special Representative is also concerned about the impartiality of some members of the judiciary who were appointed for political reasons under the former regime. This affects both the quality of justice and the integrity of an independent judiciary. He urges the Federal and Serbian Ministries of Justice to undertake the practical reforms necessary to ensure the full independence of

the judiciary and encourages international and regional actors to provide the necessary financial and technical support required.

3. Protection of national minorities

33. On 11 May 2001, the Federal Republic acceded to the European Framework Convention for the Protection of National Minorities. The Special Representative welcomes the improved normative legal framework for the protection of the human rights of all ethnic groups. In particular, he recognizes the efforts of the Federal Ministry of National and Ethnic Communities, within its limited resources, to improve the situation for ethnic minorities in Serbia, notably with a series of initiatives in Bujanovac in south Serbia and Novi Pazar in the Sanzak region of western Serbia. The legislative process of decentralization through the Law on Local Self-Government will be an important step for greater participation of ethnic minorities in public life. The Special Representative urges the Republic of Serbia to implement this legislation as soon as possible.

4. Ethnic Albanian Kosovars in detention in Serbia

34. The Special Representative welcomes the release from detention of a number of ethnic Albanians from Kosovo under the Amnesty Act passed earlier in 2001 and also the release of the so-called "Gjakove/Djakovica Group" of 143 ethnic Albanians following a court review. According to UNMIK sources,[4] 208 ethnic Albanian Kosovars remain in detention, 101 of whom have been convicted of ordinary criminal offences and 107 of offences having a significant political context, including terrorist-related acts. The Special Representative welcomes progress made in resolving the issue of detainees, but believes that the convictions of a very large number of those persons still in detention are based on evidence and trials that do not comply with minimum standards of due process. He urges the relevant Federal and Serbian authorities to conduct a comprehensive and prompt review of all such cases to ensure their full compliance with international standards. He also urges the authorities to hold practical discussions with UNMIK to find an appropriate solution for all identified cases, including the possible transfer of prisoners to Kosovo.

5. Missing persons

35. The Special Representative has been told that approximately 5,000 persons of all ethnicities remain missing and presumed dead following the conflict in Kosovo in 1999.[5] The Special Representative is deeply concerned by the slow progress being made in carrying out exhumations and forensic analysis of remains discovered in Kosovo and Serbia proper. He urges all authorities, in particular the Serbian and UNMIK authorities, to improve their practical cooperation on this issue. He also encourages adequate international financial and technical support for this work. In recent months, evidence has been produced that has led to the discovery of more than 300 bodies, including many civilian women and children from Kosovo, in mass grave sites at Batajnica, a suburb of Belgrade, and at Bajina Basta, near Uzice. Serbian police and justice officials are working closely with forensic experts to establish the identity of remains at these sites but progress has been slow. Unconfirmed estimates indicate that the number of bodies could be as many as 800.

36. The Special Representative is also concerned by the lack of progress in criminal investigations relating to other missing or murdered persons, notably the disappearance from Belgrade, on 25 August 2000, of former Serbian President, Ivan Stambolic, and the murder of journalist, Slavko Cheruvija, on 11 April 1999. However, he welcomes the recent commitment made by the Serbian Minister of Justice, Dusan Mihajlovic, to advance these and other outstanding police investigations.

6. Displaced persons

37. A recent census undertaken by UNHCR disclosed that there are still approximately 400,000 refugees and 200,000 internally displaced persons living in the Federal Republic of Yugoslavia.[6] For many, prospects of immediate or even longer-term return to their places of former residence remain bleak. The Special Representative recognizes that the presence of such a large number of persons places a heavy burden, in humanitarian terms, on the host State and on the international humanitarian agencies supporting them. Nonetheless, he notes that any durable solution for displaced persons of the region, whether it involves local integration or return, must be predicated on the enjoyment of the full spectrum of civil, political, economic and social rights, in full conformity with the

principle of non-discrimination, by all members of the society. He is concerned to ensure that all actions undertaken on behalf of displaced persons of the region should be driven forward as much by principles of human rights protection as by humanitarian assistance.

38. The Special Representative therefore welcomes steps taken by the Federal authorities to amend the Citizenship Act of 1997, which now allows refugees to obtain dual citizenship. This is an important step to regularize the legal status and human rights of refugees in the region. The Special Representative urges other States, including Bosnia and Herzegovina and Croatia, to take reciprocal steps to allow the prompt and full restoration of human rights to refugees, including their housing and property rights. He also urges the Serbian and Federal authorities to disclose and release all official registry records removed from Croatia and Bosnia and Herzegovina during the conflict that may verify the legal status and property rights of refugees now residing in the Federal Republic of Yugoslavia.

39. In relation to the situation of displaced persons from Kosovo, the Special Representative expresses his deep concern that the present climate of violence and insecurity for ethnic Serbs and other ethnic minorities in Kosovo means that few people are able to return to their homes. Notwithstanding, the Special Representative encourages all displaced persons from Kosovo to register and participate fully in provincial elections to be held in November 2001. He also calls on UNMIK and KFOR to take all necessary steps to protect the physical safety and human rights of all those who choose to return to Kosovo. For those who cannot return to Kosovo, the Special Representative urges the Republic of Serbia to ensure their full and successful integration into the social, political and economic mainstream of Serb society, on the basis of the principle of non-discrimination.

7. Ombudsman and national human rights institutions

40. A number of Federal and Republic Ministries have taken initiatives to develop national ombudsman offices. These include, inter alia, draft laws on a generic Ombudsman prepared by the Federal Ministry of Justice and a thematic ombudsman for ethnic minorities supported by the Ministry of National and Ethnic Communities. The Special Representative welcomes these efforts and other efforts to establish independent and functional national institutions, but cautions against the creation of a multiplicity of national and municipality structures that are not adequately funded and are autonomous. He is of the view that the structure and functions of such offices should be better coordinated inter se, and that all such bodies should be fully compatible with the principles relating to the status of national institutions for the promotion and protection of human rights established by the United Nations.[7]

C. Particular situation in southern Serbia

1. General situation

41. The Special Representative is encouraged by the agreement reached in May 2001, between Yugoslav and Serb authorities, the North Atlantic Treaty Organization (NATO) and representatives of the ethnic Albanian community that led to the end of most of the violence in the Presevo valley region of southern Serbia (the municipalities of Presevo and Bujanovac) and the municipality of Medvedja in the border area with Kosovo. As a result of this successful political settlement, the ethnic Albanian Liberation Army of Presevo, Mevedja and Bujanovac (UCPMB), which had been in conflict with Serbian police and Yugoslav Armed Forces, agreed to disband and to decommission their weapons. In terms of the agreement, UCPMB members were offered an amnesty from prosecution provided they laid down their weapons and renounced violence by 25 May 2001. The terms of entry into the Ground Safety Zone on the administrative boundary between Serbia proper and Kosovo have been modified progressively to allow a gradual return of Serbian Police and Yugoslav Armed Forces into the area bordering Kosovo.

2. Settlement of armed conflict

42. The Special Representative welcomes the peaceful conclusion of this conflict but remains determined that all parties must now implement fully the terms of the political settlement agreed by the parties (the "Covic Plan"). Broadly, the plan undertakes a series of measures to improve the social, economic and political rights situation for ethnic Albanians in southern Serbia. The Special Representative observes that respect for human rights has improved substantially in terms of the behaviour of police. Since June 2001, complaints of ill-treatment by police by ethnic Albanians in southern Serbia have been

infrequent. The Code of Criminal Procedure and other laws and regulations have generally been respected in the execution of police operations. Other measures that will contribute to sustaining this momentum are in process. For example, some 100 police officers, including both ethnic Serbs, ethnic Albanians and Roma, have commenced training as part of a new multi-ethnic police force for the three municipalities. The training is being carried out, in part, by OSCE.

43. The Special Representative is nevertheless concerned that more visible progress needs to be made in fulfilling other commitments made under the "Covic Plan". These relate to the reintegration of ethnic Albanians into employment in the public service sector and the local economy and the more effective representation of ethnic Albanians in municipal executive bodies. These positive measures are necessary to correct past discrimination in employment and education practices and to redress the fact that many ethnic Albanians who had been employed were deprived of their jobs as a result of having had to flee during the armed conflict in 1999. The Special Representative is concerned, in particular, about the delays in holding new municipal elections and adjusting electoral units to better represent the ethnic make-up of the population. Such delays are impeding dialogue between all those concerned and threatening the implementation of the broader plan and, with it, respect for human rights.

3. Displaced persons

44. UNHCR estimates that some 15,000 ethnic Albanians fled from the three municipalities during the Kosovo crisis in 1999 and the conflict that followed in the Presevo valley. Another 3,000 or more fled immediately prior to the return of the Yugoslav Army to the Ground Safety Zone. Most sought refuge in Kosovo. The Special Representative notes with satisfaction that, of these, some 5,500 persons have returned, most since the implementation of the peace agreement commenced. He is nevertheless concerned that some returnees have gone back to Kosovo and that more might do so by winter. The delays in fulfilling their basic needs, particularly in respect of the promises made in the Covic Plan highlighted above, are a major reason for their return to Kosovo.

4. International support

45. The Special Representative notes that both the Covic Plan and representations by the ethnic Albanian community call for a substantial contribution from the international community in terms of monitoring and political and financial support. He has received complaints from some sources about a reduced interest in the region on the part of the international community. He is of the view that a continued and active presence of United Nations agencies, such as the Office of the United Nations High Commissioner for Human Rights and other humanitarian and development-based agencies, will be important to promoting momentum to the Covic Plan over the short- to medium-term.

5. Ongoing human rights violations

46. The Special Representative is disturbed by the fact that some violent incidents have occurred since the implementation of the peace agreements and the formal disbanding of the Albanian Liberation Army (UCPMB). In August 2001, two police officers were killed and two injured by gunfire in the village of Muhovac, close to the Kosovo administrative boundary. It is believed that the attack was carried out by former UCPMB members. In the following days, police searched houses in the village looking for evidence or perpetrators of the crime. Police action was reported to be restrained and largely in keeping with national law. However, a 24-year-old man, one of four ethnic Albanian men briefly detained by police in connection with the incident, was reportedly beaten during his detention. The Special Representative urges the authorities to make further efforts to avoid the repetition of such an incident and to strengthen the formal complaints mechanism through which such incidents can be reported and investigated.

D. Situation in Kosovo

1. General situation

47. The Special Representative notes the progress UNMIK has made in a number of areas of human rights concern since the report submitted by the former Special Rapporteur, Jiri Dienstbier.[8] The Special Representative of the Secretary-General has drafted and promulgated a provisional constitution for Kosovo, which paves the way for Kosovo-wide elections. This

should be a significant step in the process of local self-governance anticipated by Security Council resolution 1244 (1999). OSCE is organizing elections for 17 November 2001 and has launched a campaign to encourage ethnic Serbs living in Kosovo and internally displaced persons living in Serbia proper to register and vote. To date, some 100,000 ethnic Serbs have registered, but there is uncertainty how many will, in fact, vote in the elections. The first organized return to Kosovo of ethnic Serb internally displaced persons, a small group of 54 individuals to an isolated Serb village, took place in August. Constructive dialogue between UNMIK and the Federal Government has finally begun on a broad range of substantive issues, in addition to which the Kosovo Ombudsperson has become actively and visibly engaged in addressing human rights problems that fall under his mandate.

48. The Special Representative is, however, concerned by the lack of progress in three key areas of relevance to his mandate: (a) the human rights situation and physical protection of ethnic minority communities in Kosovo; (b) the quality of the rule of law; and (c) the extent to which human rights standards and practices are integrated into the work of both UNMIK and KFOR.

2. Ethnic minorities

49. The most pressing human rights concerns in Kosovo remain those faced by ethnic Serb and other minority communities. Most of the estimated 100,000 Serbs remaining in Kosovo live in enclaves protected by heavily armed KFOR soldiers with no freedom of movement. Many do not enjoy effective and safe access to health, social services, schools or employment opportunities. Although violence against minorities has not notably increased over the last few months, in August a Serb convoy was ambushed, and three ethnic Serbs injured, and there was an attack on a Roma woman at a voter registration centre. Both KFOR and UNMIK face serious challenges in identifying, arresting and fairly judging those involved in ethnically based crimes. The Special Representative recognizes that the present climate of intimidation and insecurity poses a major threat to the participation of ethnic groups in the forthcoming electoral process, the return of displaced people to Kosovo from Serbia proper and the longer-term prospect of Kosovo as a tolerant and multi-ethnic society.

3. Rule of law

Judicial system

50. Kosovo's judicial system is facing major challenges in the building of a post-conflict legal system from the ground up. The Special Representative commends UNMIK for creating the court system that is now functioning. Nonetheless, substantial challenges lie ahead. These include: lengthy delays in cases being brought to trial, resulting in prolonged pre-trial detention and numerous postponements once trials begin; too many judges and prosecutors who seem unprepared for trials; and many ethnic Albanian judges and prosecutors who have demonstrated serious bias in trials involving ethnic Serbs and other minorities, in particular those accused of war crimes. The judiciary has few judges or prosecutors from ethnic minorities because, in the present climate of insecurity, their physical safety cannot be guaranteed.

51. UNMIK has taken a number of concrete steps to redress these challenges, including hiring of international judges and prosecutors as mentors for ethnic Albanian judges and creating a special jurisdiction for ethnic crimes that would place these cases largely in the hands of international judges and prosecutors. UNMIK has also placed the judiciary and the police in a new administrative structure headed by a Deputy Special Representative of the Secretary-General in order to bring greater coordination and coherence to legal reform. The Special Representative welcomes these reforms and hopes these will lead to improvements in the conduct of due process. In February 2001, the formation of the police and judiciary "pillar" was announced. Its organization, however, has been very slow, with the new head having arrived in Kosovo only in July 2001.

52. The Special Representative is concerned by practices under which persons have been detained either pursuant to an executive order of the Special Representative of the Secretary-General or by KFOR under the general mandate and terms of engagement assigned to it by Security Council resolution 1244 (1999). In the former cases, some orders have been applied to criminal suspects who have subsequently been ordered released by a court or prosecutor. In these cases, executive detentions by the Special Representative of the Secretary-General are justified on the basis of security imperatives that involve sensitive intelligence information on extremist and organized

crime groups that cannot be shared with a court, cannot be used as evidence in a trial, or must be invoked because of deficiencies in normal criminal court process itself.

53. The Special Representative therefore welcomes recent steps taken by UNMIK to improve the legal basis upon which executive orders to detain are made, including the commission of an independent detention review committee to recommend to the Special Representative of the Secretary-General whether the evidence justifies continued detention. The Special Representative notes that this remains, nonetheless, an extrajudicial measure and recommends that these decisions be returned to the judiciary, with appropriate legal safeguards, as soon as possible.

Military detention by the Kosovo Force pursuant to executive orders of the Special Representative of the Secretary-General

54. The situation of military detentions by KFOR is based on rather more obscure legal grounds.[9] The Special Representative is informed that KFOR routinely arrests and detains individuals on an extrajudicial basis, mostly ethnic Albanians suspected of fighting in the former Yugoslav Republic of Macedonia and southern Serbia, citing resolution 1244 (1999), the Kumanovo Military Technical Agreement with the Federal Republic of Yugoslavia and customary international law as the legal sources of KFOR authority for detentions. The Special Representative fully recognizes the difficult security environment prevailing in Kosovo, not least the risk of ethnic Albanian extremism and insecurity along the administrative boundary with southern Serbia and the international border with the former Yugoslav Republic of Macedonia. He is concerned, nonetheless, that such "military holds" may be incompatible with basic human rights principles and the rule of law and urges the military authorities to review their current practices in this light. If such practices are necessary to meet the exigencies of the situation, appropriate legal derogations should be entered into. In view of the fact that Kosovo criminal law now includes regulations on illegal border crossing and terrorism, and in view of the presence of international judges and prosecutors within the normal court judicial process, there is now a reduced need for the use of such exceptional measures.

4. Human rights within the United Nations Interim Administration Mission in Kosovo

55. The Special Representative is concerned that human rights principles are not sufficiently integrated and guaranteed in the process by which legislation and administrative procedures are promulgated and implemented. There seems to be some uncertainty within UNMIK as to whether its activities as a transitional government are governed by international human rights norms. UNMIK regulation 1999/24, which establishes the applicable law in the province, is unclear on this question. The Special Representative also notes that the new constitutional framework for Kosovo enumerates an exhaustive list of human rights instruments that are deemed binding in Kosovo. Although the Federal Republic of Yugoslavia was and remains a party to all main international human rights treaties, the Kosovo constitutional framework document excludes the 1966 International Covenant on Economic, Social and Cultural Rights and the 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Special Representative emphasizes the universal, inalienable and indivisible character of all human rights and urges the Special Representative of the Secretary-General to ensure that these rights form part of the applicable law in Kosovo.

56. The Special Representative is also concerned by the lack of adequate consultation and transparency in the process by which those regulations with an important human rights content are promulgated. These include recent legislation governing pre-trial detention, supervision of the media, terrorism, border control, the rights of detainees (in particular, access to counsel) and restrictions on the sale of private property in minority areas. The Special Representative encourages UNMIK to increase the resource capacity of the Office of Human Rights within the office of the Special Representative of the Secretary-General and to broaden the consultation process through which human rights are integrated into the process of promulgation.

E. Situation in the Republic of Montenegro

1. General situation

57. The continued uncertainty as to the future constitutional status of the Republic of Montenegro

continues to hamper any efforts to reform the institutions of government. At the same time, the degree of cooperation between the Federal authorities and those within the Republic of Montenegro is poor and, in some areas, non-existent. Intensive discussions are now taking place between different political parties to define the basis and timing of any referendum on independence, which, if it does take place, does not seem likely before the spring of 2002. The fragile coalition government has recently made a number of ministerial appointments, but even these may not be of a durable nature. As a result of these interrelated factors, any real progress in undertaking essential reform of the institutions of government and generally improving the socio-economic situation within the Republic has been extremely slow.

58. The Special Representative recognizes that it may not be possible to complete some reforms until greater certainty is reached on broader constitutional questions, but he is convinced, nonetheless, that there are practical areas of reform relating to human rights that can be successfully undertaken at the present time, even in the climate of uncertainty. Generally speaking, reforms are required to more clearly demarcate and separate the constituent elements of government — the executive, legislative and judicial. Specific areas for attention are addressed below.

2. Right to trial by a competent, independent and impartial tribunal established by law

59. Article 100 of the constitution of the Republic of Montenegro proclaims the courts to be autonomous and independent, bound only by the constitution and other legal acts. It also proclaims in article 5, the principle of separation of powers. Yet the principle of independence of the courts has not been fully implemented, either on a practical or on a normative level. For example, under existing legislation, judicial appointments are made by Parliament on the recommendation of Judicial Council; the Council, in turn, is itself made up of personalities of various backgrounds selected by Parliament. Furthermore, administrative and budgetary control of the courts is exclusively entrusted to the executive, in the person of the Minister of Justice. As a consequence, the Montenegrin judiciary remains part of the state apparatus, which exposes it to political pressures and potential misuse.

60. The Special Representative welcomes assurances given by the Minister of Justice that the new Law on Courts, which is part of a reform package announced in 1998, will be passed by the end of 2001. He also welcomes plans to have the Law on Petty Crime, the Law on Prosecutors and the Law on Execution of Criminal Sanctions approved by June 2002.

3. Right to a trial within a reasonable time or release pending trial

61. The Special Representative is concerned by ongoing delays in the prosecution of Nebojsa Ranisavljevic, who was charged with war crimes against civilians. On 27 February 1993, Ranisavljevic was one of a group of individuals that abducted and is presumed to have killed 20 passengers on a Belgrade-Bar train at Strpci, in Bosnia and Herzegovina. Ranisavljevic has been held in pre-trial detention since October 1996 but the Court of Bijelo Polje is still unable to proceed because of difficulties in amassing evidence. Although the Special Representative was informed by government officials of recent progress, he is anxious that the case proceed to trial without any further delay and that it be conducted on the basis of available evidence and strictly according to the prescribed legal principles of due process.

62. The Special Representative is also aware of other cases where accused persons have been held in pre-trial detention beyond the maximum period prescribed by national law and international standards. Among them, are two murder suspects, one who has been in detention since June and the other since December 1997. The Special Representative urges the relevant authorities to take effective measures to bring these protracted cases to a conclusion and in accordance with due process of law.

4. Freedom of the media and the right to freedom of expression

63. The Special Representative welcomes the promulgation of the Law on Public Information in 1998. This Act adequately implements important provisions contained in international human rights instruments and is an important step towards promoting a free and independent press, freedom of expression and better accountability of government. However, several areas of concern remain, notably the fact that current criminal legislation still provides for criminal sanctions in cases of libel and slander. In this context, the Special Representative notes a recent court decision in which the editor-in-chief of a local newspaper was

sentenced to five months (suspended) imprisonment and two years probation for reprinting articles, which were allegedly defamatory, from a foreign magazine.

64. The Special Representative believes that if critical reforms are to be effective then there must be a more open and accountable system of governance. This, in turn, will involve an active and free media and greater protection for freedom of expression. He is also of the view that adequate checks and controls can be largely maintained through the procedures and remedies of civil law as opposed to the criminal law.

65. With this in mind, the Special Representative recommends that criminal custodial sanctions for expression-related matters be abolished. He also recommends the abolition of special criminal law protection that is given to public figures and symbols listed in article 82 of the Republic of Montenegro's criminal law. He also recommends that in the current drafting of laws on electronic media and access to information, relevant international standards on the freedom of expression are taken fully into account.

5. Protection of minorities

66. The constitution of 1992 is generally in accordance with international standards relating to minority rights. Existing legislation guarantees adequate representation in Parliament to members of ethnic groups, as well as proportional representation in all forms of public administration. A Council for the Protection of the Rights of Nationalities and Ethnic Groups has also been established. The Special Representative also welcomes the fact that the authorities have considered the practical application of the European Framework Convention for the Protection of National Minorities. Although he recognizes that, at present, there is a lack of cooperation with the Federal authorities, he encourages the authorities of the Republic to harmonize their laws and best practices relating to ethnic communities, to the extent possible, with those of the Federal authorities and with those of other countries in the region.

67. The Special Representative notes, however, that there is some discrepancy between the formal legal guarantees and the actual situation for minorities in Montenegro. The two largest communities, Albanians and Muslims/Bosniaks, are not represented proportionately in public administration. Both ethnic Albanians and Muslims/Bosniaks are under-represented in the civil service, particularly at the middle and the lower level. The Special Representative was informed by senior officials that, in fact, only 0.03 to 0.05 per cent of ethnic Albanians are working in state bodies and public services. They are also under-represented in the police force and there are virtually no ethnic Albanian employees in the judicial bodies or in internal affairs. The participation of the Muslims/Bosniaks in the public administration is not much better. In this respect, the Special Representative welcomes the plans put forward by the Ministry of Interior to appoint ethnic Albanians as chiefs of police in the predominantly Albanian towns of Uncinj and Tuzi, as well as Muslims/Bosniaks for the same positions in the municipalities of Plav and Rojaje.

68. In practice, ethnic Albanian children exercise their right to education in their mother tongue in both primary and secondary schools. Generally, however, the national curriculum has not been fully adapted to reflect the needs and cultural values of different ethnic communities.

69. The Law on National Symbols, envisaged by article 69 of the constitution, is a very welcome step as it represents the first major piece of legislation in Montenegro that deals exclusively with minority issues. The law, however, also contains a non-exhaustive list of exceptions that substantially reduces its effectiveness.

6. Trafficking in human beings

70. The Special Representative is pleased to note that the victim protection programme adopted in Montenegro in early 2001, as well as the activities of the National Coordinator against Trafficking, have already brought some concrete results. A shelter (safe house) has been set up where victims find not only safety but also counselling by professional psychologists and lawyers. A newly created emergency telephone hot-line has been widely publicized in the local media. Members of the police force have attended training courses on trafficking issues and the border police of a number of countries in the region are devising concrete forms of cooperation, including exchange of data. These are commendable efforts and the Special Representative urges that they be continued since Montenegro is still an important transit region for human trafficking and illegal migration.

71. Further measures are required by all authorities to effectively address this issue, as well as more targeted international assistance in this field. Specifically, the Special Representative urges the relevant authorities to strengthen law enforcement measures and increase criminal sanctions for those involved directly or indirectly in trafficking of human beings. The laws and procedures to protect witnesses and victims during criminal proceedings must also be addressed.

Notes

[1] A/50/790-S/1995/999, annex 4, article II (8).

[2] Ibid., annex 7, chap. I, article 1, para. 3 (e).

[3] Memorandum from the President of the International Development Association to the Executive Director on the World Bank country assistance strategy for Bosnia and Herzegovina, 14 June 2000.

[4] Figures produced by UNMIK, 24 August 2001: the figures do not include a further 16 Albanian Kosovars detained in south Serbia and 7 persons in the Republic of Montenegro.

[5] The UNMIK Bureau of Detainees and Missing Persons estimates that there are approximately 3,500 ethnic Albanians and 1,500 ethnic Serbs as well as other minorities listed as missing persons.

[6] Of which approximately 385,000 refugees from the new States of the former Yugoslavia reside in Serbia and 15,000 in the Republic of Montenegro. Most internally displaced persons are ethnic Serbs and other ethnic minorities displaced from Kosovo during and since the conflict in 1999.

[7] Resolution 48/134, annex (the "Paris Principles").

[8] E/CN.4/2001/47 and Add.1.

[9] KFOR detention policy is defined in a classified document of NATO/KFOR. The Special Representative was provided with a narrative summary of its contents.